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No. 132

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

THE UNITED STATES, *Petitioner*,

v.

RICHARD S. CORS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Claims (R. 13-18) is reported in 75 F. Supp. 235.

JURISDICTION

The judgment of the court below was entered on January 5, 1948. (R. 18) A motion for a new trial was denied on April 5, 1948. (R. 18) The jurisdiction of this Court is invoked under Section 3(b) of the Act of February 13, 1925, as amended.

QUESTIONS PRESENTED

Is there any useful purpose to be served by this Court's reviewing the decision of the Court of Claims when

1. The point at issue is not new, but only a renewed attempt to secure approval of an old contention many times rejected by this Court,

2. There is no conflict on the point at issue amongst the lower courts, and

3. Adoption of the substantive position advocated by the Petitioner would:

I. Impute to the Congress the capricious intent to require the courts to deprive owners of ships requisitioned under one statute of that measure of compensation expressly guaranteed to owners of property generally (including ships) requisitioned under other statutes at the same time in effect.

II. Require construction of the statute in question in a manner inconsistent with the accepted law laid down by this Court.

III. Violate the Constitution and contradict decisions of this Court as recent as *United States v. Petty Motor Company* (327 U. S. 372 (1946)).

IV. Undermine the principles of international law insisted upon by our country for the protection of American property abroad, if applied to those of the ships taken from nationals of friendly countries for which Petitioner asks this Court to make this little case the test.

V. Most pertinent of all,—not change the outcome in this case.

STATUTE INVOLVED

The relevant provisions of the Merchant Marine Act of 1936 as amended (53 Stat. 1254, 46 U. S. C. §1242), are set forth at pages 29 to 32 of the Petition.

STATEMENT

Respondent was the owner of the steam tug MACARTHUR, which on October 15th, 1942 was requisitioned by the War Shipping Administration pursuant to Section 902(a) of the Merchant Marine Act of 1936. (R. 10)

The vessel in question is described in the findings of the Court of Claims. (R. 5, 6) She was constructed with a charcoal iron hull and had been well maintained during ownership by the United States Coast Guard until March 19, 1942, when she was purchased by Respondent. After acquisition from the Government, Respondent, with four helpers, made extensive repairs and improvements and had further work performed by a shipyard at Portland, Maine. Although he expended $5,699.78, the court found that "The amount would have been substantially greater had all of the work been performed by a shipyard at the abnormally high rates being charged at that time." (R. 9) On April 21, 1942 a Certificate of Enrollment and License was granted Respondent to operate the vessel in the coasting trade for the period of one year. (R. 9) However, on or before October 15, 1942, Petitioner (who had seven months before sold the vessel to Respondent), evidently changed its mind about needing her and requisitioned her on that date through the War Shipping Administration.

It is not disputed that at the time the MACARTHUR was taken her fair market value for the general uses to

which she could be put was the $15,500 awarded. (R. 12; Petition 8, 9) As a result of the combined operation of three factors, this market value at the time of requisition was found by the Commissioner, at Petitioner's request, to be $5,000 higher than that which prevailed on September 8, 1939. The three factors were: 1) "the demand for vessels which followed the outbreak of war in Europe"; 2) "the Government's need for vessels, which necessitated the taking of many vessels"; and 3) "the great increase in shipping and in harbor traffic which occurred during the period of the war." (R. 12-13) Together they occasioned a "general rise in the market values of nearly all vessels in and about the Port of New York." (R. 12) There is no allocation of any part of the $5,000 increase to any of these three factors.

The $5,000 by which the vessel's market value in October 1942 exceeded her market value in September 1939 is the so-called "enhancement" that Petitioner sought to have deducted from the award of just compensation. The lower court found that the fair market value of the vessel at the time of taking was $15,500 and that Respondent was entitled to such value at that time. Petitioner's contention that Congress meant to require the court to award less than the market value at the time of taking was rejected.

Petitioner sought a rehearing. Petitioner did not then, nor does it now, contend that the value was less than that found by the lower court. Its contention was and is that the court was obliged by statute to award less.

REASONS FOR DENYING THE WRIT

Petitioner's argument is in effect as follows:

1. The lower court erred in holding that the "enhancement clause" in Section 902(a) of the Merchant

Marine Act was not intended by Congress to lay down a rule binding upon the courts. (Petition 12-17)

2. The lower court erred in construing the "enhancement clause" so as to make it consistent with the constitutional requirements heretofore stated by this Court. (Petition 19-25)

3. The construction of the "enhancement clause" urged by Petitioner, though going beyond any holding of this Court, is constitutional. (Petition 17, 18, 26)

4. The facts of this case fairly test these questions for pending cases involving requisitioned ships, foreign as well as domestic. (The Petition leaves this to inference)

Petitioner does not contend that the lower court departed from the decisions of this Court or that its holdings are in conflict with those of any other lower court. It does not because it cannot.[1]

The Petition, it will be noted, allocates its discussion amongst these points in inverse ratio to their significance. The Court of Claims, to be sure, did find that the Congress did not intend to usurp the judicial function of determining what compensation is required under the Fifth Amendment; but this was not necessary to its decision. The decision below was that on the facts

[1] The only conflict known to Respondent is within the administration itself and is a matter of public record. For instance, the State Department, concerned over the effect of the position now advocated by Petitioner on ships owned by nationals of friendly countries, submitted a legal memorandum to the effect that payment of less than market value at the time of taking violated international law. (House Merchant Marine and Fisheries Committee Document 20, pp. 167-173) The Comptroller General replied that he was not disposed to question this, but that the remedy lay with a forum other than the General Accounting Office. (House Merchant Marine and Fisheries Committee Document 20, p. 184).

of this case Petitioner failed to prove that the award for Respondent's tug included any "enhancement" which can be excluded in time of war or peace from the just compensation owing under the Constitution.

I

PETITIONER'S CONSTRUCTION OF THE "ENHANCEMENT CLAUSE."

Petitioner concedes that the $15,500 award of the lower court is equal to the price that would have been paid for the vessel at the time of taking by "other potential purchasers." (Petition 9, note 4) Petitioner does not deny that the $15,500 awarded is consistent with the holdings of this Court that such market value at the time of taking is the primary measure of that just compensation required by the Fifth Amendment. Petitioner nevertheless asserts that the "enhancement clause" requires the courts to award less than the market value at the time of taking. Petitioner contends that the ambiguous language of the "enhancement clause" leaves the courts no choice but to assume a Congressional intent to deny to the owners of ships requisitioned under the Merchant Marine Act the market value of their ships when taken. Petitioner adds that this Congressional intent is such as to impel this Court to exclude from the award to Respondent up to $5,000, or one third, of his vessel's market value.

This contention necessarily imputes to the Congress the intent to discriminate against shipowners, domestic and foreign, by exacting from them a disproportionate

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* By Public Law 101, 77th Congress (55 Stat. 242, 50 U. S. C. App. §§ 1271-1272), compensation to be paid for foreign-owned ships requisitioned by the United States was to be determined in accordance with "the applicable provisions of Section 902."

contribution to the cost of making war. No "enhancement clause" or anything comparable to it appears in any other United States requisitioning statute. Both the General Requisitioning Act of October 16, 1941[3] and the Act of October 10, 1940[4] (authorizing the requisitioning of war material destined for export) require the payment of true just compensation. The former statute expressly requires compensation to be determined "in accordance with the provision for just compensation in the fifth amendment," and the latter makes specific reference to market value as the measure of just compensation. The uniform result of the decisions under these statutes is to award property owners as just compensation the market price at the time of taking, without deduction for any supposed "enhancement."

There is no question but that Respondent would be awarded as just compensation the amount others would have paid for his property if, instead of a ship, that property had been bronze castings,[5] textile machinery,[6] brass piping,[7] a leasehold,[8] pork products,[9] or any of the other types of property the United States requi-

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[3] 55 Stat. 742, 50 U. S. C. App. §§ 721-724, as amended, 56 Stat. 176, 181, 50 U. S. C. App. § 636.

[4] 54 Stat. 1090, 50 U. S. C. App. §§ 711-713.

[5] Graves v. United States, 62 F. Supp. 231 (W. D. N. Y. 1945).

[6] Boras Wafveri Aktiebolag v. United States, 71 F. Supp. 740 (Ct. Cl. 1947).

[7] Lessner Plumbing & Heating Co. v. United States, 64 F. Supp. 931 (S. D. N. Y. 1945).

[8] United States v. Petty Motor Co., 327 U. S. 372 (1946). *Cf.* United States v. General Motors Corp., 323 U. S. 373 (1945).

[9] United States v. John J. Felin & Co., 68 Sup. Ct. 1238 (1948).

sitioned during the war (or even the very ship in question if the War Department had requisitioned her) under one or the other of the statutes cited above. Less than three years ago, in *United States v. Petty Motor Co.*, this Court described the plaintiff's right to recovery for a leasehold requisitioned in wartime in the following explicit language:

> "The Constitution and the statutes do not define the meaning of just compensation. But it has come to be recognized that *just compensation is the value of the interest taken. This is not the value to the owner for his particular purposes or to the condemnor for some special use but a so-called 'market value'.* It is recognized that an owner often receives less than the value of the property to him but experience has shown that the rule is reasonably satisfactory. Since 'market value' does not fluctuate with the needs of condemnor or condemnee but with *general demand for the property,* evidence of loss of profits, damage to good will, the expense of relocation and other such consequential losses are refused in federal condemnation proceedings." (Italics added)[10]

So far as we are aware, no one has successfully contended that this language is an incorrect statement of the law as applied to ships or other property; nor that any sum in the nature of "enhancement" should be deducted from the market value of property requisitioned during the war—even though the value of leaseholds and most other kinds of property increased substantially from causes directly or indirectly related to the war. On the contrary, in the *Petty Motor* case, Petitioner itself argued that the market value of the prop-

[10] 327 U. S. 372, 377-378 (1946).

perty when taken was the question to be determined by this Court.[11]

Certainly it is plain that the shipowner who has lost his ship is in exactly the position of the tenant who has lost his lease. Each of them has lost a capital asset that may be the basis of his livelihood; each of them is forced to pay market prices for the things he buys in wartime; each of them may equitably expect that the Government do the same. It would require the most explicit statutory language to support the conclusion that Congress intended to pay the tenant what his leasehold would bring in the open market at the time of taking and to pay the shipowner no more than his ship would have brought in the open market three years before she was taken. (It will be recalled that the $5,000 Petitioner seeks to deduct represents increase in general market value between September 8, 1939 and October 15, 1942, the date the MacArthur was taken).

II

The "Enhancement Clause" Properly Construed, is Consistent with the Decisions of this Court.

To reject, as the lower court did, a construction that would require unjust discrimination does not leave the "enhancement clause" without meaning. Being ambiguous, it is susceptible of interpretation consistent with the accepted law of this Court. A glance at Section 902(a) of the Merchant Marine Act discloses that it should be read as declaratory of concepts inherent in the judicial application of "just compensation." For example, Section 902(a) provides that "the owner shall

[11] See the summary of Petitioner's brief printed with the report of the *Petty Motor* case contained in 90 L. Ed. 729, 730.

not be paid for any consequential damages arising from a taking . . . of property under authority of this section." Nothing is better settled in our law than that consequential damages for the taking of property are not recoverable. (See *United States v. Petty Motor Co., supra*)

The "enhancement clause," read judiciously, is only another Congressional expression of existing case law. This law allows nothing above the market value for general uses, *i.e.*, it excludes enhancement over the market attributable to ~~the~~ need of the Government for a use peculiar to it which is therefore not available to or desired by potential purchasers generally. In still other words, just compensation is not value to the particular taker, but an amount equal to general market value. An example of the application of this rule appears in *Olson v. United States*, 292 U. S. 246 (1934), cited at page 24 of the Petition. There the plaintiff was denied compensation for *the special value to the Government* of "flowage" rights on the condemned land which could not have been so used by the plaintiff *or any other private owner*. Such value is of course not reflected in market price. (Petitioner, be it noted, does not suggest that the $15,500 market value of the MacArthur reflected any special value to the Government.)

United States v. Miller, 317 U. S. 369 (1943), also cited in the Petition, is a refinement on the *Olson* case. The facts there were these: In August, 1937, Congress authorized a reclamation project that necessitated the relocation of a railroad right of way. For this, alternate routes had been laid out and staked, one of them over plaintiffs' land. It was then foreseeable that the plaintiffs' land would probably be taken. Actual condemnation proceedings against plaintiffs' land were

not begun until December, 1938, at which time land values in the general area had enhanced *solely* by reason of the Government project.

This Court found that plaintiffs' property was definitely earmarked for probable taking by August, 1937, and held that the court below did not err in excluding evidence of "increment of value *due to the initiation of the project*" and arising after August 26, 1937." (p. 373) The language is the trial court's; the italics are this Court's. In its footnote (6) this Court said the Circuit Court erred in construing the quoted language to exclude "*any increment in value* after August 26, 1937." Again the italics are this Court's.

This Court's test of excludable enhancement in the *Miller* case, therefore, is (1) whether the Government is definitely committed to a project involving a taking of the specific property in question and (2) whether the value of plaintiff's property increased *solely* because it is known that it is "probably within the scope of the project."

The Government did not initiate at any time during the war a "project" of taking for title the whole or even a large part of the United States Merchant Marine. By far the greater number of the ships that were requisitioned were taken for use;[12] and a substantial number of such ships were not taken at all. In no sense,

[12] A taking "for use" was in effect a compulsory bare-boat charter or rental for the duration, with the owner usually employed at a profit as a "general agent" to manage *his* ships for the Government, with the right to carry adequate insurance against sinking—a very different thing from separating the owner permanently from his capital asset with compensation restricted, as Petitioner contends, to less than the vessel could be sold for had the owner wanted to part with his means of gaining a livelihood.

therefore, could the Government's general wartime "need" of vessels be considered a "project" within the meaning of the *Miller* case. Much less could the passage of the Merchant Marine Act of 1936 be seriously considered such a "project," as Petitioner indeed acknowledges in the weakness of its suggestion that such passage indicated that at some indefinite future time the Government "might well" have to requisition "many" ships. (Petition 25)

The lengths to which Petitioner goes in an effort to bring this case within the *Miller* case confesses an appreciation that its contention must stand or fall on that case. For the sake of its argument, we will assume (against reason) that the Government's "need" in 1942 was equivalent to a "project." The rule of the *Miller* case requires Petitioner to prove *in addition:* (1) that it was known on the date after which further market increases, attributable to this "project," constitute deductible enhancement, that it was reasonably probable the MacArthur would be requisitioned, and (2) that this prospect of requisition did, in fact, cause the "enhancement" that the Petitioner seeks to deduct from the $15,500 of general market value. On the facts of this case such proof is demonstrably impossible. The market to which Petitioner would restrict the Respondent was of a date prior to March 19, 1942, when Respondent purchased the vessel from the Government. At the date of purchase, and long after that, Respondent and any other ordinary person would have every reason to believe that the vessel in question was outside the scope of the so-called "project." Under any rule of common sense, Respondent was the one person who had every reason to believe that Petitioner had no use for the vessel, else it would not so readily

have sold her after it entered the war. Furthermore, there is nothing in the record to substantiate Petitioner's inference that the prospect of requisition did, in fact, have anything whatsoever to do with the market for the MACARTHUR at the time she was taken. On the contrary, it was specifically found that "Prior to the time defendant [Petitioner] requisitioned the *MacArthur* there was no reasonable prospect that she would be requisitioned, and no part of the enhancement in her value was due to such a prospect." (R. 13)

The cases cited by Petitioner for the proposition that current market value is not the true measure of just compensation do not sustain its position:

Bauman v. Ross, 167 U. S. 548 (1897), does not support any deduction from fair market value; on the contrary, it holds only that if a benefit is conferred on a property owner by the Government he may be required to pay for it.

In *United States ex rel. T. V. A. v. Powelson*, 319 U. S. 266 (1943), not one penny was deducted from market value. The property owner in that case asserted that its land was worth more than the market price, contending that the owner's power of eminent domain, conferred by the state, would enable it to combine the land which it owned with numerous pieces of land to form a large power development. Since the general public did not have the landowner's right of eminent domain, the landowner could not have secured from the public the price above the market it asserted was the proper measure of compensation.

Petitioner's misreading of *United States v. Chandler-Dunbar Water Power Co.*, 229 U. S. 53 (1913), is, if possible, more striking. Here the landowner was awarded the general market value of his property, but

excepted to the award on the ground that it did not include the sum of $15,000, said to be the "strategic" value of the property. In the nature of things this "strategic" value was one which only the Government could have utilized. There was no buyer except the taker who would have considered it in making a purchase. This Court properly excluded from the award any payment for such over-the-market value, saying (at page 80):

> "That the property may have to the public a *greater value than its fair market value* affords no just criterion for estimating what the owner should receive." (Italics added)

For the Petitioner to characterize these cases as permitting awards of just compensation in a sum less than the market, *i.e.*, less than the owners could have secured "from private persons for their own use," is a departure from the facts, from the holdings, and from the express statements in the opinions cited. In fact the only cases which permit the award as just compensation of a sum less than market value are those such as the *Olson* and *Miller* cases discussed above.

Petitioner contends that the authority of Congress to prescribe a more restrictive method of compensation than that allowed by the courts "flows not only from the Fifth Amendment and the general federal eminent domain power, but even more importantly from the Government's war power." (Petition 26) The argument runs that if Congress has the full right to protect the nation against war profiteering it has the right to prescribe a measure of compensation for certain property taken that is less than that paid for other property taken and less than the amount that the courts have con-

sistently held does not constitute profit, but only the *minimum* necessary to make the owner whole. Petitioner's contention that the war powers to prevent profiteering have an important bearing demonstrates a confusion that is entirely unwarranted. The very cases that Petitioner cites contrast these two very different powers—the curbing of profits and the taking of property.

In *Lichter v. United States*, 68 Sup. Ct. 1294 (1948) (Petition 26), Mr. Justice Burton said:

> "The recovery by the Government of excessive profits received or receivable upon war contracts is in the nature of the regulation of maximum prices under war contracts or the collection of excess profits taxes, rather than the requisitioning or condemnation of private property for public use." (At p. 1317)

and in *Bowles v. Willingham*, 321 U. S. 503 (1944), a rent-ceiling case, (Petition 26) Mr. Justice Douglas said:

> "We are not dealing here with a situation which involves a 'taking' of property." (At p. 517)

The Petition does not make allowance for the fact that the owner of the MacArthur was subject, like all other Americans, to all of the legislation designed to curb wartime profiteering and to assure that each contribute to the war effort according to his means. Petitioner seeks on top of this to impose on the owners of ships whose capital assets were taken from them an additional contribution not required to be made by others whose property the Government needed.

Not only does Petitioner impute to the Congress the intent so to discriminate, but devotes five pages of the

Petition to contending that the Congress intended this lower measure of value to be obligatory upon the courts. (Petition 12-17) The statement of the lower court that Congress did not mean to have the Courts apply one measure to make certain owners whole and a lesser measure for other owners was not necessary to the court's decision. If, on the other hand, as Petitioner contends, the Congress did intend to bind the Court of Claims and this Court to such different measures of compensation, the lower court and this Court would be equally compelled to find the legislation, so construed, to be invalid.

III

Petitioner's Construction of the "Enhancement Clause" Would Violate the Constitution.

The defining of "just compensation" under the Fifth Amendment is a judicial, not a legislative function. Petitioner admits that this is a correct statement of the law, as expressed in the leading case of *Monongahela Navigation Co. v. United States,* 148 U. S. 312 (1893). (Petitjon 21) It asks this Court to "discard" or, at least, to "qualify" the principle that the *Monongahela* case expresses because passage of Section 902 shows "purposeful adoption" by Congress of the "enhancement clause." (Petition 21) It is not clear why "purposeful adoption" makes valid a law that would be unconstitutional if unintended.

The fact that the *Monongahela* case has been undisputed law for fifty years is not a reason for changing it, as Petitioner would seem to urge. It is good law and should remain the law because it takes account of the fact that the power to requisition property is one of the most peremptory of the powers a government can

exercise. The taking cannot be resisted, nor can the owner later recover consequential—but none the less real—damages. He is limited to "just compensation." If the very authority that makes the decision to take the property could also determine by being purposeful enough what shall be paid for it, the owner would have no protection against arbitrary exercise of this tremendous power. For this very reason, the basic law of the land includes the guaranty of the Fifth Amendment; otherwise Congress would in a real sense act both as advocate and judge in its own cause. If a man's livelihood could be taken away and recompensed at the rate the taker chose to offer, every man's livelihood would exist at the purposeful pleasure of the Government. This is why the *Monongahela* case is as valid and persuasive today as it ever was.

IV

Petitioner's Construction of the Enhancement Clause, As Applied to Foreign-Owned Vessels, Would Violate International Law.

The first reason assigned by Petitioner for granting the requested writ is that "there are now about seventy suits . . . for the taking of merchant vessels . . . and in almost all of these cases the judicial application of the 'enhancement' clause would materially affect the awards." (Petition 11-12) This Court is left to assume that this case fairly tests the principle for the other seventy suits. It becomes necessary, therefore, to inform this Court that a substantial number of the seventy suits involve ships taken from the nations of friendly countries.

Petitioner's contention, if applied to vessels of friendly foreigners, would violate the principles of in-

ternational law upheld by this country and, indeed, insisted upon by it for the protection of American property abroad. On April 16, 1943, Secretary of State Hull forwarded to the War Shipping Administration "a memorandum setting forth important considerations which it is believed should be taken into account in connection with the settlement of the claims of the Danish owners." The Secretary of State continued:

> "While the matter is of importance from the standpoint of the international responsibility of this Government with respect to the properties of nationals of foreign countries, it is also of importance from the point of view of the expropriation by foreign governments of extensive properties of American nationals in foreign countries, whose interests we must keep in mind."

The memorandum stated that in the testimony leading to the enactment of the statute under which foreign ships were taken (and which adopted the "applicable" provisions of Section 902(a)) "the Department had in mind, of course, the payment of 'just compensation' as heretofore determined by both municipal and international tribunals."

The memorandum went on to cite decisions of this Court and of international tribunals to the effect that for compensation to be just, it must be the market value at the time of taking. The memorandum concluded:

> "It is not believed that either the language of the statute in question or its legislative history indicates that it was intended to be in disregard of established international law in relation to the payment of 'just compensation' as interpreted and applied by international tribunals."

The foregoing is a matter of public record. The above quotations are from House Merchant Marine and Fisheries Committee Document 20, pp. 167, 169, 173.

V

The Law Hitherto Established by This Court Makes the Present Case Moot.

All of the questions presented by the Petition should be reserved, if heard at all, to another case where Petitioner's contentions fit the facts. While it is sought to be argued that the Court of Claims' decision is principally premised upon its statement that the enhancement clause of Section 902(a) is not binding upon it, a reading of its opinion discloses that careful consideration was given to the proper construction of that Section and its constitutionality under settled principles laid down by this Court, assuming that Section 902(a) was meant to bind the courts.

The principal question and error assigned to the lower court's decision is moot, since there was no showing of any enhancement of any kind in the market during the seven months Petitioner owned the MacArthur. Respondent picked up at a public sale a vessel Petitioner did not want, repaired and improved her and could have sold her, had he wanted, for the price the court awarded. Petitioner's elaborate contentions are not sound, but in any event they do not fit this case.

It is to be noted that Petitioner is unable to give this Court a clear statement of the circumstances giving rise to the alleged enhancement in the value of the MacArthur and the measure of that enhancement in dollars and cents. It merely says that "*If* the 'enhancement' clause should properly be considered in the mak-

ing of the judicial award, some, at least, of this enhancement must be eliminated." (Petition 27) Petitioner's case falls because its proofs have failed. The evidence before the court convincingly demonstrated that there was nothing properly deductible from the fair market value at the time of taking, which was held to be the measure of just compensation to which Respondent is entitled.

CONCLUSION

Petitioner asks this Court to review the decision of the Court of Claims in such a way that the Respondent will ultimately receive in lieu of just compensation for his tugboat an amount lower than the price he could have sold her for when she was taken, though the owners of other types of requisitioned property receive that price.

On its face, therefore, the Petition asks this Court to promulgate an unreasonable construction of a statute and thereby to become a party to an unjust discrimination against Respondent individually and against shipowners as a class. It makes this request on the basis of presumed Congressional "intent" to practice such discrimination, neglecting to consider that such an intent, if unequivocally expressed in legislation, would invalidate the enactment.

The decision of the Court of Claims was correct and no useful purpose can be served by this Court's review. It gives to Section 902 of the Merchant Marine Act of 1936 a reasonable interpretation which avoids discrimination and which brings the operation of the statute into line with both judicial concepts of just compensation and the current practice of Petitioner under parallel statutes. It gives effect to the facts in the Record.

It is respectfully submitted that these considerations should persuade this Court to deny the writ prayed for.

Respectfully submitted,

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